

Before The
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In The Matter Of)	
)	
Recommendations of the)	
Independent Panel Reviewing)	EB Docket No. 06-119
The Impact of Hurricane Katrina)	
On Communications Networks)	

**WRITTEN COMMENTS OF
HAMS FOR ACTION**

HAMS FOR ACTION (HFA) is a newly formed group of Amateur Radio operators. We are small but nationwide. Our primary priority is persuading governmental decision-makers to adopt policies which empower and encourage Emergency Communications, and other public service activities, by Amateur Radio volunteers.

HFA's Acting President is Don Schellhardt, Esquire KI4PMG, of Roanoke, Virginia. He is former President of THE AMHERST ALLIANCE and former Vice President, Government Relations of THE NATIONAL ANTENNA CONSORTIUM (NAC).

Along with HFA Board Member Nickolaus E. Leggett N3NL, of Reston, Virginia, Mr. Schellhardt has co-authored Petitions For Rulemaking which led to FCC Dockets RM-5528 (Electromagnetic Pulse protection), RM-9208 (Low Power FM Radio) and RM-10330 (Electromagnetic Pulse protection again). Also, Messrs. Schellhardt and Leggett were parties to the Petition that triggered Docket RM-11287 (Low Power AM Radio). In addition, Mr.

Leggett filed the Petition which led to Docket RM-10412 (Field Repairability of Amateur Radio equipment).

Besides Mr. Leggett, HFA has 3 other Board Members.

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Cameron Bailey KT3A of Pennsylvania, who works for the U.S. Army and lives near Harrisburg, has been involved with local Emergency Communications since the Three Mile Island reactor incident of 1979. 27 years later, he serves as Communications Officer for his local Emergency Operations Center, which covers 3 municipalities.

Roger L. Fraumann AC8Q of California is a communications consultant in the San Diego area. One of his specialties is Emergency Communications.

W. Lee McVey W6EM, who resides in the Birmingham area of Alabama, is also a communications consultant. In addition, he is retired from Pacific Gas & Electric and is licensed as a Professional Engineer in both California and Florida.

HFA's Recent Petition For Rulemaking

Due to its direct relevance to the matters which are under consideration in FCC Docket 06-119, HAMS FOR ACTION hereby places into the record of this Docket a copy of HFA's recent Petition For Rulemaking to the Federal Communications Commission. A copy of this Petition, and of its Appendices, is ATTACHED.

The HFA Petition contains a proposal for partial and conditional overrides of bans imposed upon exterior Amateur Radio antennas, and related equipment, by Homeowners' Associations (HOAs) and/or restrictive covenants, and/or by landlords.

The proposed overrides would be made only in the case of Amateur Radio operators who qualify for certification as trained emergency communicators. The Petition further proposes certain guidelines for defining what constitutes “reasonable accommodation” of Amateur Radio antennas. These guidelines, which take the form of “rebuttable presumptions” of reasonableness, have been carefully designed to address possible aesthetic concerns.

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Key Points For The Commission To Consider

The ATTACHED Petition, and related Appendices, present HFA’s proposal -- and also the case for it -- in some detail.

In these Written Comments, however, we are highlighting certain key points for the Commission:

1. The value of Amateur Radio, as a medium for Emergency Communications, has never been more clear. It is a form of communication that keeps operating even when everything else is down.

During Hurricane Katrina, when even the most sophisticated military communications had failed, the President of the

United States was able to reach the Mayor of New Orleans solely through the labors of Amateur Radio volunteers.

Further, even during emergencies when other forms of communication have not failed, such as the reactor meltdown at Chernobyl, hams have almost always been the first sources of information coming out of a disaster area.

2. It is not enough for the Commission to “suspend” impediments to Amateur Radio operations, and/or take other steps to empower and encourage Emergency Communications by hams, after a crisis has begun.

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Such actions will be helpful, but nowhere near sufficient. For hams to be ready *later*, they must be recruited, licensed and trained *before* the emergency occurs.

Meeting this challenge is becoming increasingly difficult as more and more of the nation’s neighborhoods adopt antenna bans which effectively place ham activities “Off Limits”. How do you recruit people for training on equipment that they must purchase, but are not actually allowed to use at home until and unless a disaster strikes?

3. At present, at least 40% of American neighborhoods are dominated by HOAs and/or restrictive covenants. Virtually all of these neighborhoods ban all exterior Amateur Radio

antennas, large or small, conspicuous or not. This is, functionally, the same as a ban on Amateur Radio itself. Further, most rental apartments have landlords who also ban any Amateur Radio antennas, of any size or configuration.

Between restrictive covenants and landlords, more than half of America's neighborhoods are now closed to ham radio -- and, by extension, denied the potentially life-saving benefits of having volunteer emergency communicators on the block.

4. These antenna prohibitions fall with particular ferocity upon younger generations of Americans. This occurs because HOAs are disproportionately concentrated in newer housing developments. At the same time, due to prices

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for owner-occupied housing that have skyrocketed upward in real dollars, younger Americans must typically spend more of their lives in rental apartments -- if they can move out of them at all.

Yet these disproportionately affected younger Americans are the very people to whom the Amateur Radio Service, and indeed the nation, must look -- as, over the years ahead, today's volunteer emergency communicators are, shall we say, retired by God.

5. Antenna bans imposed by HOAs and/or restrictive covenants

are not the result of unimpeded market forces. For them to be true products of a free marketplace, they would have to be negotiated between the seller and the buyer -- under conditions in which the buyer could negotiate a different deal from a competing developer, if he or she chose. Instead, antenna bans are typically arranged between the seller and the bank, long before the buyer even arrives on the scene. Further, they are typically arranged in a climate where every bank in a given local area is imposing a similar (or identical) requirement on every developer in a given local area. Indeed, in some jurisdictions, covenant-mandated HOAs, and with them bans on all exterior Amateur Radio antennas, are required in all new housing developments *by law*. There is no way in which this situation can be described as “the unfettered marketplace” in action.

6. Even if antenna bans *were* the result of unimpeded market forces, governments have been willing to limit the results of such forces in the past.

In 1948, it was more common than not for private real estate, in both the North and the South, to be encumbered by restrictive covenants which automatically excluded potential buyers of certain races (usually all races except Caucasians). This did not stop the U.S. Supreme Court from declaring all such restrictive covenants, everywhere, to be egregious violations of the Constitution and therefore unenforceable.

Moving to a less culturally and politically charged context, few municipal governments would hesitate to override a restrictive covenant that allowed unlimited occupancy in a house, contrary to legal occupancy limits, or livestock raising in a residential neighborhood, contrary to zoning laws, or outhouses in a city, contrary to health and safety laws.

Shouldn't restrictive covenants also be ignored when they stand in the way of national security -- and neighborhood safety -- by denying entire housing developments the presence of a single Emergency Communications volunteer?

7. The current OTARD regulations provide a clear and established precedent for overriding antenna bans under the aegis of the FCC.

If antenna bans can be overridden for the sake of permitting a commercial enterprise, then why shouldn't they also be overridden for the purpose of saving lives?

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8. Although the Commission has rejected Petitions for Amateur Radio antenna ban overrides in the past, these rejections should *not* be viewed by today's Commission as binding precedents.

First, the rejections were made under an entirely different set of Commissioners in a significantly different time. The Petition rejections pre-dated 9/11, the tsunami mega-disaster

in Asia, Hurricane Katrina -- and other events which simultaneously revealed both the vulnerability of established infrastructures and the resilience of Amateur Radio volunteers.

Second, the rejections addressed Petitions For Rulemaking that were substantially different from HFA's own, newer approach. Previous Petitions sought antenna ban overrides for the benefit of all Amateur Radio operators, while the HFA

Petition proposes to limit that benefit to Amateur Radio operators who are also certified emergency communicators.

Also, previous Petitions made no effort to define “reasonable accommodation”, leaving it up to case-by-litigation to determine the details of how Amateur Radio antennas could be regulated. The HFA Petition proposes to set “rebuttable presumptions” of reasonableness, thereby minimizing costly court conflicts and also providing HOAs with assurance that the aesthetic impact of the authorized ham antennas will be modest.

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Conclusion

For the reasons set forth herein, we urge the Commission to adopt the recommendations contained in the ATTACHED Petition For Rulemaking, which we have previously filed with the Commission and have now entered into the record of FCC Docket 06-119.

Respectfully submitted,

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